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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/777,554	02/06/2001	Barbara Scott	BBC-077/A.	8200

7590 04/05/2005

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EXAMINER

SHIAO, REI TSANG

ART UNIT	PAPER NUMBER
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1626

DATE MAILED: 04/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/777,554

Applicant(s)

SCOTT ET AL.

Examiner

Robert Shiao

Art Unit

1626

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED on March 07, 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on 07 March 2005. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☒ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

09/17,534

Continuation of 11. does NOT place the application in condition for allowance because:

1. The amendment filed on March 07, 2005 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:
In claim 1, page 6, lines 9-11, the newly added compounds No. 1-2, 4-7, are not found in the original written description. Applicants are required to cancel the new matter in the reply to this Office Action. It is suggested that a proviso is provided to overcome the 102 (a,b) rejection set forth in the Office Action, dated June 22, 2004, i.e., when W is H, R1 is not C1 alkyl, Y is not S, etc.
2. Applicant's arguments regarding rejection of claims 1-22 and 38-58 under 35 U.S.C. 103 (a) as being unpatentable over Das et al. US 2002/0123484 A1 (now is US 6,825,355), filed on March 07, 2005, have been fully considered but they are not persuasive. It is noted that Das et al. compounds of formula (I) as protein kinase inhibitors, still render obviousness of instant compound of formula (I) as kinase inhibitors, wherein the variable Q represents hydrogen thereof; the variable Y represents S; the variable W represent H, Cl, NO₂, substituted alkyl, etc; the variable X1 represent hydrogen or alkyl; the variables R1 and R2 independently represent hydrogen, alkyl, nitro, amino, alkylamino, NHX3, or NX3X3, and X3 is hydrogen, alkyl, or aryl, and R3 represents amino, alkylamino, or arylamino.
The motivation to make the claimed compounds derives from the expectation that the instant claimed compounds derived from known Das et al. compounds would possess similar activity (i.e., protein kinase inhibitors) to that which is claimed in the reference.
3. Claims 1-22, and 38-58 are objected to as containing non-elected subject matter heteroaryl or heterocycle, i.e., pyridyl, triazole, furanyl, imidazole, morpholine, pyrrolidine, etc. It is suggested that applicants amend the claims to the scope of the elected subject matter set forth in the paragraph four of the Office action, dated June 22, 2004.
4. Claims 23-37, and 59-60 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention. Applicants are requested to cancel claims 23-37 and 59-60 to eliminate the non-elected invention.

KAMAL A. SAEED, PH.D.
PRIMARY EXAMINER

Kamal Saeed
Rs. 3/29/05